

Two Cases

[Vigeant v. Town of Hudson](http://www.nh.gov/judiciary/supreme/opinions/2005/vigea020.htm), decided February 23, 2005
<http://www.nh.gov/judiciary/supreme/opinions/2005/vigea020.htm>

Vigeant was denied a variance to construct a five-unit multi-family residential building that did not meet the front yard setback. Superior court reversed the ZBA's decision, and the supreme court upheld the reversal, thereby granting the variance.

The supreme court properly applied the Boccia area variance hardship standard to this situation. The court found that because multi-family uses were permitted in the relevant zone, the question of reasonableness was not relevant—if a use is permitted in the zoning ordinance, it is presumed to be reasonable (“...we hold that it is implicit... that the proposed use must be reasonable.”). Focusing on the second prong of the Boccia standard, the court found that “It would be difficult to envision any reasonable permitted use which could be made of this parcel of real estate” (quoting the superior court). The supreme court also said that when considering an area variance, “the question of whether the property can be used differently from what the applicant has proposed is not material.” Therefore, the ZBA improperly attempted to induce the applicant to reduce the scope of his proposal from five to four units.

[Harrington v. Town of Warner](http://www.nh.gov/judiciary/supreme/opinions/2005/harri039.htm), decided April 5, 2005
<http://www.nh.gov/judiciary/supreme/opinions/2005/harri039.htm>

Here, the supreme court affirmed a superior court's decision upholding the grant of a variance for the expansion of a manufactured housing park. The Warner Zoning Ordinance required a minimum of 10 acres for manufactured housing parks, and a maximum of 25 units per park. The property already contained a 33-unit park and a 54-site campground, but consisted of 26 acres. There was apparently sufficient acreage to subdivide the property to create a 10-acre lot that could accommodate a new manufactured housing park, but the existing lot lacked requisite frontage for a subdivision, and the configuration of the lot and the existing facilities precluded construction of a new town road through it.

In this case, the court found that because there was a limit as to the number of units that could be included in a manufactured housing park, a variance seeking more units than that was a use variance, not an area variance. The court rested this view on the notion that “[a] use variance allows a landowner to engage in a use of the land that the zoning ordinance prohibits.” Despite this further attempt by the court, the difference between area and use variances remains ambiguous, as the facts of the role-play tried to illustrate.